have located mining claims on Horn Island. A protest against the color of title applications was filed in the Office of the Secretary of the Interior on December 7, 1956, after the Baker and Skrmetti appeals (A–27416 and A–27417) were filed. This protest was made by Mr. Joe A. Moore, attorney for A. V. Walker and Elmer H. Gautier.

The record is therefore remanded to the Bureau of Land Management for such action as may now be appropriate on the application of the Board of Supervisors for the land and on any mining claims which may have been located on the land covered by that application.

Accordingly, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F. R. 6794), the decisions of the Acting Director of the Bureau of Land Management dated August 23, 1956, affirming the rejection of the Baker and Skrmetti applications to purchase lands in secs. 13, 23, and 24, T. 9 S., R. 8 W., under the Color of Title Act are affirmed.

EDMUND T. FRITZ,
Acting Solicitor.

UNITED STATES v. GEORGE W. BLACK

A–27411 *Decided April 1, 1957*

Mining Claims: Determination of Validity—Mining Claims: Discovery

Where a deposit of sandstone is shown not to have a present or prospective market value, it is not a valuable deposit within the mining law and a claim based on such a deposit is properly declared null and void.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

George W. Black has appealed to the Secretary of the Interior from a decision dated August 3, 1956, of the Acting Director of the Bureau of Land Management which affirmed a decision of the manager of the Phoenix land and survey office holding null and void two building stone placer mining claims.

Mr. Black located the mining claims, the Grasshopper Flat Nos. 1 and 2, on February 1, 1948. They lie in sec. 11, T. 17 N., R. 5 E., G. & S. R. M., Arizona, within the Coconino National Forest. On January 16, 1953, the claimant filed an application for a mineral patent (Arizona 04324) covering both claims in which he asserted that the claims contain sandstone in placer form, valuable as a building stone, and that he is entitled to a patent under the United States mining laws (30 U. S. C., 1952 ed., secs. 22, 35, 161). On May 11, 1953, the Regional Forester, United States Forest Service, Department of Agriculture, filed a protest against the claims (43 CFR 205.3). Thereafter, contest proceedings were instituted against the claims

and a hearing was held on October 20, 1953, before the manager of the Phoenix land and survey office. Both parties appeared at the hearing, were represented by counsel, presented witnesses who were subject to cross examination, and submitted briefs at each stage of the proceedings.

The contest was brought on the following charges:

> (1) That no discovery of a valuable building rock or other mineral deposit has been made on said mining claims and that said mining locations are null and void;
>
> (2) That the lands embraced in said claims are more valuable for national forest and public purposes than for building stone or any other substance, including erosional debris, there occurring;
>
> (3) That like or similar stone and debris occur over wide areas in this vicinity and northern Arizona generally;
>
> (4) That the economic market for the stone and erosional debris is limited to the local vicinity and that no economic market is available for the stone and erosional debris other than for local use;
>
> (5) That the said mining claims are not held in good faith for mining and milling purposes but are held as residence sites under the guise of the mining law and contrary to the mining law.

Charges 3 and 4 are, in reality, particularizations of charge 1 and these three charges may be considered as a unit.

The mining claims are located in the Coconino National Forest in an area known as Grasshopper Flat or Rainbow Canyon, located a few miles from Sedona, Arizona.

There was a great deal of testimony at the hearing about the value of the land for residential purposes, but in the view we take of the case, the relative value of the land for mining or residence purposes is immaterial. The land covered by the mining claims does not contain any valuable timber, nor is it suitable for grazing (Tr. 11, 12). However, it lies in an area of scenic beauty which makes it desirable as a recreational area (Tr. 30).

It appears that the mineral on the claims is sandstone (Tr. 7); that it is suitable for use in the construction of homes and other small buildings (Tr. 15, 18); that it has been used to some extent for this purpose and as a road fill (Tr. 52, 54); that it exists in substantial quantity on the claims; that sandstone as the common or country rock of the area is of widespread occurrence (Tr. 7, 24), and that the sandstone in the claims is of the same character and appearance as the other sandstone in the area (Tr. 7). It also is undisputed that at the town of Sedona about 3 miles distant from Grasshopper Flat there is an operating quarry offering stone of better quality (Tr. 34, 40); that Black has sold only $100—$150 worth of stone from his claims (Tr. 63); and that the rest of the stone taken from the claims had been disposed of in exchange for services (Tr. 66, 70).

Under the mining laws of the United States (30 U. S. C., 1952 ed., secs. 21, 22, and 35) only "valuable mineral deposits" may be located and the lands involved must be valuable for minerals. A discovery of a valuable mineral deposit must be made within the limits of each claim. A valid discovery, it has often been held, is one which would warrant a man of ordinary prudence in the further expenditure of his time and money with a reasonable prospect of success in an effort to develop a paying mine. *Castle* v. *Womble*, 19 L. D. 455 (1894); *Chrisman* v. *Miller*, 197 U. S. 313 (1905); *United States* v. *Strauss et al.*, 59 I. D. 129, 137, 138 (1945).

With respect to nonmetallic deposits of widespread occurrence, the pertinent considerations were summarized in *United States* v. *Strauss et al.* (*supra*, p. 138), as follows:

> Gypsum, clay, limestone, and the other kinds of stone here involved have been held to be minerals. *W. H. Hooper*, 1 L. D. 560 (1881); *Alldritt* v. *Northern Pac. R. R. Co.*, 25 L. D. 349 (1897); *United States* v. *Barngrover et al.*, 57 I. D. 533 (1942). But whether particular deposits of these and other mineral substances of wide occurrence are *valuable* mineral deposits within the contemplation of the mining laws and whether the lands containing them are therefore subject to location and purchase under the mining laws are questions of fact, *held to depend upon the marketability of the deposit.* The rule long laid down by both the courts and the Department requires that to justify his possession the mineral locator or applicant must show that by reason of accessibility, *bona fides* in development, proximity to market, existence of present demand, and other factors, the deposit is of such value that it can be mined, removed, and disposed of at a profit. *Ickes* v. *Underwood et al.*, 78 App. D. C. 396, 141 F. (2d) 546 (1944); *opinion of Acting Solicitor*, 54 I. D. 294 (1933); *Layman* v. *Ellis*, 52 L. D. 714 (1929). In *Big Pine Mining Corp.*, 53 I. D. 410, 412 (1931), the syllabus said:
>
> > "Lands containing limestone or other minerals, which under the conditions shown in the particular case cannot probably be successfully mined and marketed, are not valuable because of their mineral content, nor subject to location under the mining law."

Since these claims are situated in a national forest, the evidence sustaining the validity of the mineral locations must be clear and unequivocal. *United States* v. *Dawson*, 58 I. D. 670, 679 (1944); *cf. United States* v. *Langmade and Mistler*, 52 L. D. 700 (1929).

In the absence of any serious dispute that the claims contain sandstone in sufficient quantity and of a quality at least suitable for use in constructing houses, their validity must, in the first instance, rest upon the marketability of the deposit. This factor, in turn, depends upon the existence of a present demand for the sandstone and its proximity to market.

The contestee makes no claim that the sandstone can be sold at any place other than the immediate vicinity of the claim. In fact, the evidence indicates that the potential market for the sandstone is limited to the Grasshopper Flat area, excluding even the Sedona area some

3 miles away (Tr. 12, 21, 78). As to the market in the Grasshopper Flat area, Black could show only that a few houses had been built from stone from his claim, but that the stone had been given away (Tr. 63) so the services could be applied against the assessment work (Tr. 66, 69, 70, 74). As to the potential market, the most favorable view was that if certain subdivisions were developed there might be 300–400 building lots the purchasers of some of which might use stone from Black's claim to build their homes (Tr. 21, 22, 78).

In view of the fact that Black held the claims for 5 years during which the area underwent a rapid development without being able to sell any stone from it for building purposes (except for the few houses built with stone exchanged for services), it is my opinion that there is no present market for the stone of any consequence (*United States* v. *Estate of Victor E. Hanny*, 63 I. D. 369 (1956)).

Assuming that, all other factors being present, a prospective value is sufficient to validate a building stone claim,[1] I find that the sandstone in these claims has no prospective value. The possibility of a future market hinges upon several contingencies. Even if all of them were to occur the market would be extremely limited and temporary. In such circumstances the claims have only a conjectural, not a prospective, value for mining purposes. *United States* v. *Underwood*, A–22066, p. 9 (August 11, 1939).

The only other use to which the stone on the claim has been put is to furnish material for fill for roads to a limited extent (Tr. 52, 55, 56, 72). Such use cannot validate a building stone placer claim. *Holman et al.* v. *State of Utah*, 41 L. D. 314 (1912); *Gray Trust Co.* (on rehearing), 47 L. D. 18 (1919).

Accordingly, I find that the conclusion that there is no market for the sandstone from the claims is correct. In the absence of marketability the deposits of sandstone are not valuable mineral deposits within the meaning of the mining law. *United States* v. *Strauss et al.* (*supra*); *United States* v. *Estate of Victor E. Hanny* (*supra*). It follows that charge 1 (including charges 3 and 4) has been sustained and that the claims are null and void.

Since the Acting Director's decision must be affirmed upon this finding above, it is not necessary to consider charges 2 and 5.

Therefore, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F. R. 6794), the decision of the Acting Director holding the claims null and void is affirmed.

EDMUND T. FRITZ,
Acting Solicitor.

[1] *Cf. United States* v. *D. L. Underwood et al.*, A–19293, p. 19 (September 9, 1937), A–22066, pp. 2, 5 (August 11, 1939), rehearing denied June 14, 1940; affirmed *Ickes* v. *Underwood*, 141 F. 2d 546 (App. D. C., 1944), *cert. denied*, 323 U. S. 713; and *United States* v. *Strauss et al.*, 59 I. D. 129, 138.